

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
TWENTY-SIXTH REGION**

In the Matter of:

E&D WEB, INC.

Employer

MASTER GRAPHICS, LLC

Employer

and

Case 26-UC-182<sup>1</sup>  
(Formerly Case 13-UC-315 )

CHICAGO LOCAL 458-3M, GRAPHIC  
COMMUNICATIONS INTERNATIONAL  
UNION, AFL-CIO

Petitioner

**DECISION AND ORDER**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.<sup>3</sup>

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. A question affecting commerce exists concerning the clarification of the bargaining unit of employees described by the petition filed herein.<sup>4</sup>
4. The Petitioner proposes to clarify the bargaining unit as follows:

all employees performing lithographic production work at the establishment at 1100A South Main St., Rochelle, Illinois 61068, being operated in the name of Master Graphics, LLC, an alter ego of and single employer with E&D Web, Inc.<sup>5</sup>

#### **ORDER**

It is hereby ordered that the petition filed herein be, and it hereby is dismissed.

#### **RIGHT TO REQUEST REVIEW**

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **September 1, 1999**.

**DATED** August 18, 1999, at Memphis, TN.

/s/

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Gerard P. Fleischut, Regional Director  
Region 26, National Labor Relations Board  
1407 Union Avenue, Suite 800  
Memphis, TN 38104-3627  
tel:901-544-0018

1. Case 26-UC-182 (Formerly Case 13-UC-315 ) has been transferred to Region 26 for the issuance of a Decision by the undersigned. Upon issuance of this Decision, this case will automatically transfer back to Region 13 except that Region 26 will retain jurisdiction with respect to issues relating to the substance of this Decision.

2. E&D Web, Inc. (herein "E&D Web") and Master Graphics, LLC (herein "Master Graphics") filed Employers' Joint Post-Hearing Brief. E&D Web and Master Graphics are jointly referred to herein as "Employers". Chicago Local 458-3M, Graphic Communications International Union, AFL-CIO (herein "Petitioner" or "Union") filed Petitioner's Post-Hearing Brief. Both briefs have been duly considered.

On June 28, 1999 E&D Web filed a Motion to Reopen and Supplement Record in order to introduce correspondence from Union President Charles Timmell dated June 23, 1999. In said correspondence, Timmell noted that the existing jurisdiction language of the Chicago Lithographers Association Agreement (herein "CLA Agreement") does not, in and of itself, confer jurisdiction on the Union over lithographic production work performed by employees of an entity which is affiliated with, but not separate from, a member of the CLA. Timmell also noted that the existing language does not confer jurisdiction over an affiliate of a CLA member absent a showing of an alter ego or other improper relationship between the CLA member and its affiliate.

On July 1, 1999, the Union submitted its Response to Motion to Reopen and Supplement Record and Conditional Motion to Supplement Record. Therein, the Union stated it had no objection to the inclusion of Timmell's June 23, 1999 letter in the record provided that the following additional correspondence was included as well: Union counsel Wesley Kennedy's April 30, 1999 letter and CLA Chairman Gary Minnig's May 24, 1999 letter. On July 2, 1999, E&D Web submitted its Response to Petitioner's Conditional Motion to Supplement Record stating that E&D Web had no objection to Petitioner's Conditional Motion to Supplement Record. Based on the above, the record is herewith reopened in order to receive into evidence Respondent's Exhibit 52 consisting of Timmell's June 23, 1999 letter and Union's Collective Exhibit 36 consisting of Kennedy's April 30, 1999 letter and Minnig's May 24, 1999 letter. The foregoing exhibits are herewith received and the record is now closed.

3. The Union served a subpoena on the Employers requesting, at paragraphs 8 and 9, copies of customer information from E&D Web and Master Graphics on certain named customers, including identification of all jobs performed by either employer for the named customer. The Union also sought documents for the same customers of Master Graphics since September 1, 1998, including customer communications, estimates, proposals, job specifications, layouts and approvals to print. The Employers each filed motions to revoke paragraphs 8 and 9 of the subpoena on the grounds that the subpoena was overly burdensome. In the alternative the Employers took the position that the Union could move for continuance of the hearing in order to review the

requested documents at its own expense. The Union agreed and moved for a continuance as prompted by the Employers' motions. The Union's motion for continuance was denied. The Union's exception to the denial of its motion is denied in that the record fully and adequately addresses all relevant issues.

4. The parties stipulated that E&D Web and Master Graphics each purchased in excess of \$50,000 from out of state vendors during the last calendar year.

5. The Union currently, and at all times relevant herein, represents a bargaining unit of E&D Web employees engaged in lithographic production work performing press work, feeder work, pre-press, general work, shipping, receiving and equipment maintenance. These employees are referred to herein as the "bargaining unit". The Union filed this unit clarification proceeding on August 12, 1996 seeking to include in this unit all employees performing lithographic production work at Master Graphics in the bargaining unit of lithographic production employees currently represented by the Union at E&D Web. Acting Regional Director Harvey Roth issued a Decision and Order on September 20, 1996 and dismissed the petition. The Union filed a request for review on October 3, 1996. Pursuant to an Order of the National Labor Relations Board issued on February 25, 1999, a hearing was conducted on March 23-25, 1999.

The Union, contrary to the Employers, takes the position that Master Graphics' employees fall within the definition of the existing bargaining unit at E&D Web because Master Graphics is an alter ego and single employer with E&D Web. As such, according to Petitioner, it is not necessary to consider accretion issues or whether such a unit is appropriate because the contract between the Union and E&D Web applies to Master Graphics' lithographic production employees as a matter of law. Even if Master Graphics is not an alter ego and single employer with E&D Web, the Union contends that lithographic production employees at Master Graphics constitute an accretion to the employees currently represented by the Union at E&D Web. The Employers take the position that Master Graphics is not an alter ego and single employer with E&D Web and urges that there is no basis for accreting Master Graphics' lithographic production employees in the bargaining unit at E&D Web.

E&D Web's current shareholders are Barton Love and his children Chris Love, Ken Love, Vicki Olson and Laura Vollbrecht. E&D Web's directors are Barton Love, Chris Love, Ken Love, Kary Love and Sophie Siek. Since January 1, 1999, E&D Web's corporate officers have been Barton Love (Chairman and responsible for general oversight of E&D Web's business and prices), and his children Chris Love (CEO and responsible for sales and equipment), Ken Love (COO and primarily responsible for purchase of paper supplies and assisting E&D Web President Vendl) and Kary Love (Secretary). Donald Vendl (President and former Executive Vice President) and Sophie Siek (Treasurer) are not related to Barton Love, but are long term employees. Vendl is ultimately responsible for supervising E&D Web's non-union represented employees. Siek handles accounts payable and receivable.

E&D Web employed 66 employees performing lithographic production work when the instant petition was filed. This number includes press room employees, general workers, maintenance employees and shipping and receiving. As of May 1998, E&D Web employed 52 press room employees. E&D Web is engaged in the business of commercial lithographic printing with its principal production facility located at 4633 West 16th Street, Cicero, Illinois. Lithographic printing uses an image, created via photography or electronic scanning, from a piece of art or design work. A separate piece of film is generated for each color used in the process; each component color is printed on a separate printing "unit", each of which prints a single color. An eight color press, therefore, has eight separate printing units. Printing plates are prepared (referred to as "platemaking") for each color used in the process. In lithographic printing, ink is transferred to the printing plate and then is washed off that portion of the plate where an image is not desired. The ink is transferred to a rubber plate cylinder (similar to a rubber stamp) that prints on the paper as it is fed through the press. There are separate plates and separate printing processes for each component color of a finished product.

E&D Web's recognition of the Union is embodied in a collective bargaining agreement (herein "cba") effective May 1, 1996 through April 30, 1999. E&D Web was historically a member of the Chicago Lithographers Association (herein "CLA"), an association of lithographic printers in the Chicago area. The CLA has been a party to a series of multi-employer collective bargaining agreements with the Union, including one effective from May 1, 1991 through April 30, 1996 (herein "CLA Agreement"). E&D Web withdrew from the CLA during the terms of the CLA Agreement and entered into the aforementioned cba. The record reveals that E&D Web has since rejoined the CLA and is negotiating a new multi-employer agreement with the Union.

Article 1.1(a) of the cba provides that E&D Web "recognizes the Union as the exclusive representative, for the purpose of collective bargaining with respect to rates of pay, hours of employment, and other conditions of employment, of all employees performing lithographic production work in the establishments of the respective employer." At Article 1.1(b), lithographic production work is defined as "being and is all work, processes and operations directly related to lithograph or offset printing (dry or wet methods). It also includes any technological change, evolution or substitution for any work, process or operation now or hereinafter utilized for any of the work described above."

Employers point out in brief that the CLA Agreement contained language identical to that of the cba. That is, Article 1.1(a) of the CLA Agreement provides as follows: "employer recognizes the Union as the exclusive representative . . . of all employees performing lithographic production work in the establishments of the respective employer" (emphasis added). The preamble to the CLA Agreement defined "Employer" as the CLA. The Union takes the position that use of the term "respective employer" signified that the bargaining unit is defined, not as the entire CLA, but in terms of the particular employer.

Similar to E&D Web, Master Graphics is also engaged in the business of commercial lithographic printing. Master Graphics' principal production facility is located at 1100A S. Main St., Rochelle, Illinois, about 80 miles from the E&D Web facility. Master Graphics was formed on April 29, 1994 and employed 7 lithographic employees when the instant petition was filed. It currently employs 17 employees in classifications represented by the Union at E&D Web. Master Graphics' facility in Rochelle is leased to Master Graphics from the Love Unlimited Investment Partnership (herein "LUIP"). The parties stipulated that Barton Love is the general partner of LUIP and its limited partners are his children Chris Love, Kary Love, Ken Love, Vicki Olson and Laura Vollbrecht. Master Graphics has been in operation since December 1994.

The current members of Master Graphics are Chris Love (Managing Partner), Ken Love and MG Ltd. Barton Love's daughters Vicki Olson and Laura Vollbrecht are not currently members of Master Graphics, but were identified as members in the original Articles of Organization. MG Ltd. is a limited liability partnership whose general partners are Chris Love and Ken Love. The limited partners are Vicki Olson, Laura Vollbrecht and Kary Love. Chris Love and Ken Love are referred to herein as the "Love brothers".

At Master Graphics the supervisory hierarchy includes Plant Superintendent Richard Frueh and Plant Manager/Director of Manufacturing Greg Wroble. Neither Frueh nor Wroble supervise any employees at E&D Web. Wroble was hired in November 1998 and reports directly to Chris Love. Prior to Wroble's arrival, Frueh reported to Love. Frueh and Chris Love established initial wage rates and journeyman wage rates for Master Graphics employees during a couple of meetings and phone calls in 1994. Frueh testified that he and Chris Love had "a different idea" of what the rates should, but that he (Frueh) prevailed in convincing Love that he could obtain a more qualified work force by paying a higher wage. Thus, the wage rates set in the Master Graphics employee handbook reflect Frueh's recommendation to Chris Love. Once the initial wage rates were set, Frueh testified that he alone determined wage rates and wage increases.

Frueh testified that he is responsible for recruiting, hiring, firing and disciplining employees at Master Graphics. Frueh testified that he is in "total charge" of all manufacturing aspects of the Master Graphics plant, including employees, employee schedules, vacations, ordering of materials, quality control, crew schedules and shifts. In performing these duties, Frueh does not consult with Chris Love, Ken Love or with any other individuals. According to Frueh, he and Wroble handle wage increases on a yearly basis which are then approved by the Love brothers. After Frueh and Wroble determine the amount of the wage increase, Frueh contacts one of the Love brothers and informs them of the amount of the increase.

E&D Web is a larger operation than Master Graphics and has a more extensive supervisory structure than Master Graphics. Plant Manager Frank Folkens is in charge of all manufacturing operations, including the daily labor relations concerning E&D Web's bargaining unit employees. The record reveals

that Folkens (and supervisors Dennis Klowinski and David DeLeo) have independent authority to hire, fire, schedule employees, promote employees, adjust grievances, authorize days off and administer the cba. The corporate officers and directors are not involved in day-to-day supervision of E&D Web's bargaining unit employees.

Master Graphics Plant Superintendent Frueh testified that the Love brothers created a bonus program for Master Graphics' employees and allocate the amount awarded to each employee. Frueh's role in the bonus program is limited to informing the Love brothers of the employees' length of service and general performance. Master Graphics did not initially provide health insurance benefits for its employees, thus Chris Love agreed to reimburse Frueh and other employees for the cost of COBRA benefits.

Terms and conditions of employment for E&D Web bargaining unit employees are set forth in the cba. Frueh, in consultation with Kary Love (attorney for both E&D Web and Master Graphics), drafted Master Graphics' employee handbook based upon a manual he received from the Printing Industries of Illinois. Differences include: standard work week (40 hours for Master Graphics and 37.5 for E&D Web); overtime (at 40 hours for Master Graphics and on a daily basis after 7.5 hours worked or on a weekly basis after 37.5 hours worked at E&D Web); premium pay (no premium for daily or weekend overtime at Master Graphics and double time on Saturdays after 4 hours of work and for any hours worked on Sundays at E&D Web); benefits (union-sponsored insurance and retirement plans, 4 weeks of vacation after the first year and 9 paid holidays at E&D Web and company-sponsored insurance and benefit plan and less paid vacation at Master Graphics) and wages (pursuant to the cba at E&D Web and lower starting rates at Master Graphics reflecting geographic market rates).

The record reveals that the Love brothers have been observed at the Master Graphics facility, especially during the first two years of Master Graphics' operation. The testimony varies regarding the frequency of their visits, with estimates ranging from once or twice a week to three or four times a month in late 1994 and monthly or bi-monthly in 1995. Other members of the Love family have also been observed visiting the Master Graphics facility. Initially Plant Superintendent Frueh spoke with Chris Love by telephone on a daily basis. Currently such phone calls are conducted between Plant Manager Wroble and E&D Web Production Manager Knowles.

It is undisputed that E&D Web's pre-press manager (then Tom Dixon) was responsible for setting up Master Graphics' platemaking operations. Dixon is also listed as pre-press supervisor on Master Graphics production schedules through September 1995. George Hayes (former E&D Web feeder) testified that he observed a roll of paper belonging to Master Graphics in the E&D Web facility. Hayes noticed that the label was addressed to Master Graphics. E&D Web President Vendl acknowledged that portions of approximately 10% of Master Graphics' jobs use paper from E&D Web inventory.

Both E&D Web and Master Graphics purchase platemaking supplies from PDI. E&D Web and Master Graphics receive a volume discount based on the total volume of supplies purchased. E&D Web Production Manager Knowles testified that he and Frueh created the daily production sheets used by Master Graphics based upon the form then being used at E&D Web. The Union points to the following business forms used by Master Graphics that are substantially identical and/or based on E&D Web forms: job tickets for individual jobs; estimates; invoices; extra work tickets; daily press reports and the jackets for customer job files. The Union also points to a handful of occasions where E&D Web forms were used on Master Graphics jobs. Employers admit that occasionally they may use or store paper or supplies belonging to the other in order to cover for shortages. In such instances, the transactions are documented and billed.

The record does not reveal any permanent or temporary transfers of employees from E&D Web to Master Graphics. One former E&D Web employee (Jeffrey Eggert) was hired as a new employee at Master Graphics and worked at Master Graphics for about 6 weeks. Eggert spoke with Chris Love in about early 1994 concerning his intention to resign from E&D Web. According to Eggert, Chris Love offered him a day-shift position at Master Graphics. Eggert says he had a conversation with Frueh, but was not interviewed by him before he was hired. Employers submit that Chris Love, upon learning that Eggert intended to resign from E&D Web, suggested that Eggert apply for employment at Master Graphics. Contrary to Eggert, Frueh testified that he conducted an interview with Eggert and that he, not Chris Love, made the decision to hire Eggert. Frueh also testified that Eggert had voiced his intentions to leave E&D Web before being offered a job at Master Graphics. Eggert commenced working for Master Graphics in about October 1994 and resigned six weeks later in mid-November 1994 because he did not receive the wages and benefits initially promised by Chris Love. A few days later (and before his last scheduled day at Master Graphics), Frueh instructed Eggert to vacate the premises under threat of being arrested for trespass. Eggert understood that this directive came from Chris Love.

The record reveals that at least one E&D Web maintenance employee has performed work for Master Graphics. Former E&D Web employee Eggert testified that he observed E&D Web maintenance employee Larry Robsen performing electrical work at Master Graphics on two occasions. Frueh confirms that E&D Web maintenance employee Larry Robsen was present at the Master Graphics facility on two occasions. However, according to Frueh, on one such occasion, Robsen was just visiting the facility and on the other occasion Robsen was assisting in the installation of Master Graphics' equipment. While the Union alluded to a possible second E&D Web maintenance employee who may have worked at Master Graphics, Frueh testified that Robsen was the only E&D Web employee who had performed any services for Master Graphics.

Beginning in 1994, E&D Web and the Union engaged in negotiations regarding the installation of a second eight-color double-web press with in-line



finishing (herein “new Web 2”) and E&D Web’s request for reduced manning of such a press. Employers contend that such discussions concerned E&D Web’s desire to reduce manning on its then existing eight-color double-web with in-line finishing press (herein “Web 2”), not on a new press. E&D Web and the Union met on March 23, 1994 and later (on March 29, 1994) the Union submitted a proposal in response to E&D Web’s request for a reduction in manning. E&D Web did not respond to the proposal, but the Union and E&D Web discussed same in a telephone call in June 1994. E&D Web advised the Union that the Union’s proposal called for “too many pressman on the press” and that the new press may not fit in E&D Web’s facility. Current E&D Web President Donald Vendl testified that the new press required more storage space for paper due to its higher speed. Vendl also testified that restrictions on environmental emissions at the E&D Web facility played a role in the decision to install the new press at Rochelle. Regarding Vendl’s testimony concerning space restrictions, the Union points out that E&D Web could have, but did not consider, obtaining additional space by storing paper at a facility located next door to E&D Web and accessible by doorways between the two facilities. Also E&D Web Second Pressman William Mavrick testified that he “could see no reason why the press could not have been installed at E&D Web. The new Web 2 is manned with three pressman and joggers, while the Web 2 at E&D Web required 3 pressman, a feeder and packers.

Prior to the Web 2 being retired in 1997, both E&D Web and Master Graphics used eight-color, double-web presses with in-line finishing. Currently, though, E&D Web does not use an eight-color double-web press with in-line finishing. The record reveals that Master Graphics’ press (the new Web 2) was similar to the Web 2 used at E&D Web, but it was modified to run faster and the “cutter” was updated. The new press has a larger format than E&D Web’s, has more color printing capability and is able to run two rolls of paper simultaneously. Eggert, who formerly worked at E&D Web, testified that he did not need specialized training in order to work on the press at Master Graphics.

E&D Web and Master Graphics use the same sales staff. The record reveals that two members of E&D Web’s sales staff (Charles Russell and Harry Levonian) are paid a salary and, thus, are employees of E&D Web. These employees also make sales for Master Graphics for which Master Graphics pays a 2% commission. Other members of the sales staff are paid straight commission and are independent contractors. E&D Web does not impose any limitation on who the independent salespeople sell to and the record reveals that they perform work for Master Graphics, E&D Web and other printing shops. Contrary to the Union, Employers take the position that sales representatives determine at which facility orders will be produced.

Estimates are prepared by E&D Web’s estimators using E&D Web computer hardware and software. E&D Web Production Manager Donald Knowles prepares the daily production schedules and computer-generated job ticket for both E&D Web and Master Graphics. Knowles assigns orders to a particular press, but the determination of which production employees will staff

the press is made by the plant manager at each facility. E&D Web customer service representatives use the job ticket to draw hand-written layouts used by production employees in setting up and running the job. It is undisputed that samples of printed Master Graphics' product is shipped to the E&D Web facility so that quality control checks can be performed. All of the foregoing functions (and more) are a result of the Management Services Agreement signed by E&D Web and Master Graphics in about August 1994. Sophie Siek signed the agreement on behalf of E&D Web and Chris Love (Siek's superior) signed the agreement on behalf of Master Graphics. Kary Love, E&D Web Secretary, drafted the document. Pursuant to this agreement, E&D Web agreed to provide the following services to Master Graphics: estimating, layout, customer service, scheduling, quality control, bookkeeping, accounting, total record keeping, including processing of accounts payable and receivable, payroll and paper inventory. As consideration, Master Graphics agreed to pay \$2,000 per month to E&D Web as a "management services fee". The Union argues that, given the scope of the services provided, the modest monthly fee contained in the contract was not a commercially reasonable, arms-length payment for the services rendered. Instead, the Union submits that E&D Web was subsidizing Master Graphics during its start-up phase through the provision of in-kind management and administrative services. Employers contend that the agreement was the consequence of normal economies of sale; it would not make sense for Master Graphics, a small operation, to hire a large office staff to perform the aforementioned functions when it could simply contract them out for a fee.

About August 1995, E&D Web President Vendl testified that the monthly management fee was increased from \$2,000 to \$5,000 "because the contractual sum was not sufficient to cover the services rendered" by E&D Web. About September 1997, the monthly fee was raised to \$10,000 per month. The record at Petitioner Exhibit 20 reveals that Master Graphics was billed \$152,700 as management services fees in December 1998. Additionally, Master Graphics is billed \$50 per hour for quality control work performed by E&D Web and is billed for such other expenses as phone, auto and express mail delivery charges. The Union takes the position that the aforementioned increase in the monthly service fee and miscellaneous charges (for quality control and other expenses) are not authorized by the Management Services Agreement. Thus, according to the Union, E&D Web has "extracted enormous unauthorized payments from Master Graphics" and is "using Master Graphics to 'upstream' enormous amounts of money without any proper contractual basis." The Union also argues that the contract was negotiated for E&D Web's benefit by three individuals, all of whom are officers of E&D Web.

E&D Web's Press Specifications as of September 12, 1995 lists 5 presses which, at the time, were located at E&D Web's facility in Cicero. The sixth item on the press specification identified the new Web 2 which was located at Master Graphics' facility in Rochelle. According to E&D Web Production Manager Don Knowles, salesmen send the press specifications to prospective customers and use them as sales tools. Knowles testified that the last press identified on the document, the "new press", was never physically located at E&D Web. E&D

Web's current brochure identifies Master Graphics as E&D Web's Illinois mid-state facility.

The record reveals that both E&D Web and Master Graphics serve customers not served by the other. That is, there are some customers exclusively served by E&D Web and some customers exclusively served by Master Graphics. However, it is undisputed that there is some "overlap" in customers. Common customers include: Avon, BRG; Brylane; Discover; Meredith Corp.; Michigan Bulb; Montgomery Ward; Sears; Spiegel; Victoria's Secret; and Webcraft. Seaward and Soodik are current customers of Master Graphics and are former customers of E&D Web. Regarding the overlapping customers, Knowles testified that Master Graphics runs certain work that cannot be run at E&D Web. In this regard, President Vendl testified that approximately 75% of the production hours at Master Graphics related to jobs which, due to either color requirements, speed efficiencies or other requirements could not be produced at E&D Web at a low enough price to procure such jobs from the customer. Contrary to Vendl, Production Manager Knowles testified that E&D Web could not economically produce about 40% of the jobs run by Master Graphics. For example, Master Graphics, but not E&D Web, is capable of running a 64 page catalog. For other customers, E&D Web is capable of handling the run, but Master Graphics can run it in half the quantity because the Master Graphics' press can print both sides of the roll at the same time. The record reveals for one job in particular, E&D Web employees performed production work on a job that may have been charged to a Master Graphics job. In this instance, the job was produced partly at E&D Web and partly at Master Graphics; the job was billed on a single E&D Web invoice to the customer. Former E&D Web employee Michael Minghi testified that on fewer than 10 occasions E&D Web stripping or platemaking employees performed work on jobs which were later printed at Master Graphics. The record reveals other instances where a job was originally contemplated to be run at E&D Web, but was ultimately transferred to Master Graphics because of extenuating circumstances and press availability.

#### ANALYSIS

In Board law, the term "alter ego" is in effect a subset of the "single employer" concept (i.e., not all single employers are alter egos, but all alter egos by definition meet the criteria for single employer status)". Gartner-Harf Co., 308 NLRB 531, 533 (1992). In determining whether two businesses are alter egos, the Board considers whether the enterprises have substantially identical management, business purpose, operation, equipment, customers, and supervision, as well as ownership. Crawford Door Sales Co., 226 NLRB 1144 (1976). The Board examines the following factors to determine whether two enterprises are single employers: interrelationship of operations, centralized control of labor relations; common management and common ownership and financial control. Gartner-Harf Co., 308 NLRB at 533; South Prairie Construction Co. v. Operating Engineers Local 627, 425 U.S. 800, 802 (1976). Both E&D Web and Master Graphics are engaged in the business of providing commercial

lithograph printing services. The Union cites to the Article of Incorporation for E&D Web and Master Graphics in urging that the business purpose of Master Graphics and E&D Web are, "for all practical purposes, identical." Employers take the opposite view and contend that Master Graphics and E&D Web do not perform the same type of work and do not compete for the same jobs. The differences between Master Graphics and E&D Web result from differences in equipment used by the enterprises. Master Graphics currently uses an eight-color double-web with in-line finishing press. While E&D Web also operated an eight-color double-web with in-line finishing press until 1997, the updated Master Graphics press is able to perform certain jobs that E&D Web presses are unable to perform and is able to perform other jobs at a more attractive price than E&D Web presses.

The Union also contends that every person with an ownership interest in Master Graphics is a child of Barton Love. Save Kary Love, they are all shareholders in E&D Web and three of them (Chris Love, Ken Love and Kary Love) hold corporate offices with E&D Web. Employers assert that Barton Love retains voting control over the shares of Chris Love and Ken Love pursuant to an agreement dated January 1, 1994. According to this agreement, Barton Love retains control over such shares until January 1, 2003 and, therefore, currently retains voting control over 90% of E&D Web shares.

Daily supervision of lithographic production employees is handled separately by each facility. Thus, Plant Superintendent Frueh is responsible for daily labor relations at Master Graphics and Plant Manager Folkens is responsible for same at E&D Web. At Master Graphics among other things, Frueh sets wages, schedules, shifts, and crews; he also hires, fires, disciplines and establishes annual wage increases. Concerning the latter point, Frueh obtains approval of same from the Love brothers, but such approval has never been withheld. In brief, Employers refer to E&D WEB Production Manager Knowles as "production scheduler"; however, Employers also admit that Knowles is a member of management. Moreover, notwithstanding his testimony to the contrary at hearing, Knowles' business card identifies his title as "production manager."

Master Graphics and E&D Web have different terms and conditions of employment, with E&D Web employees being governed by the cba and Master Graphics employees being governed by the Master Graphics employee handbook developed by Frueh in consultation with Attorney Kary Love. The Union points to instances where certain jobs were transferred from one facility to the other or where supplies were maintained at one facility on behalf of the other. Employers' contend that the Union's focus on the rare instances where some interrelation in the production process did occur only serves to highlight how much these were the exceptions to the rule.

As noted by the Union, there is some degree of interrelations of operations as a result of the Management Services Agreement entered between Master Graphics and E&D Web in 1994. Under this agreement, E&D Web provides the following services to Master Graphics: estimating, layout, customer service,

scheduling, quality control, bookkeeping, accounting, total record keeping, including processing of accounts payable and receivable, payroll and paper inventory. Currently, Master Graphics pays a monthly management fee of \$10,000 to E&D Web. Master Graphics also pays an hourly rate of \$50 for quality control work performed by E&D Web employees, reimburses E&D Web for certain expenses and pays a 2% commission for sales generated by E&D Web's salaried sales staff. The record reveals, and Employers do not dispute, that E&D Web and Master Graphics share common customers. Employers submit, however, that each has customers not serviced by the other.

The record reveals some factors supporting the Union's contentions, including overlapping ownership and common customers. The record reveals commonality with regard to corporate officers and directors, but it also reveals separate management of the facilities through Plant Manager Folkens at E&D Web and Plant Manager Wroble and Plant Superintendent Frueh at Master Graphics. On balance, I find that E&D Web and Master Graphics are neither single employers nor alter egos in light of their separate supervision and separate control of labor relations.

The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to such units are not accorded a self-determination election, thereby hindering the Board's ability to insure the employees' rights to determine their own bargaining representative. Passavant Retirement & Health Center, 313 NLRB 1216, 1218 (1994), citing Compact Video Services, 284 NLRB 117, 119 (1987). It is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed that it may separately constitute an appropriate bargaining unit. Passavant Retirement & Health Center, 313 NLRB at 1218, citing Hershey Foods Corp., 208 NLRB 452, 458 (1974), *enfd.* 506 F.2d 1052 (3d Cir. 1974). Moreover, the Board has consistently held that a single facility unit geographically separated from other facilities operated by the same employer is presumptively appropriate even though a broader unit might also be appropriate. Manor Healthcare Corp., 285 NLRB 224, 225 (1987). This presumption may be rebutted by a showing that the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and that the additional employees share an overwhelming community of interest. Passavant Retirement & Health Center, 313 NLRB at 1218, Safeway Stores, 256 NLRB 918 (1981).

Under Section 102.60(b), a unit clarification proceeding is appropriate only for the purpose of defining the composition of an existing unit or to determine unit placement of relocated employees, but not for establishing bargaining rights in a new and separate unit. See, e.g., Gitano Distribution Center, 308 NLRB 1172, 1174 n. 12 (1992) (quoting Melbet Jewelry Co., 180 NLRB 107, 110 (1969)). Under Gitano Distribution Center, the Board found that the disputed enterprises were a "single employer" but did not find that the disputed employees should be included in the bargaining unit. The Board abandoned the "spin-off theory" and began with a rebuttable presumption that the unit at the new facility was a

separate appropriate unit. The presumption may be rebutted by a showing that the facility in question has been so effectively merged into a more comprehensive unit, or is so functionally integrated as to have no separate identity. If the presumption of appropriateness is not rebutted, the Board applies a simple fact-based majority test to determine whether the employer is obligated to recognize and bargain with the union at the facility in dispute. If a majority of the employees at the new facility are transferees from the original bargaining unit, the Board presumes these employees continue to support the union and will require the employer to bargain. Absent a “majority” showing, the presumption of continuing employee support for the union does not arise and no bargaining obligation exists. Gitano Distribution Center at 175. In determining whether the presumption has been rebutted in a given case, the Board considers such factors as central control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any. The Board has identified employee interchange and common day-to-day supervision as being especially important in a finding of accretion. Towne Ford Sales, 270 NLRB 311, 311-12 (1984). For example, the presumption was overcome in Coca-Cola Bottling Company of Buffalo, Inc., 325 NLRB No. 40 (1998) where daily operations and labor relations were controlled centrally; only a “minimal statutory supervisor” was stationed at the warehouse; working conditions, skill and functions of the warehouse employees were identical to those of employees at the old facility; geographic separation of 20 miles was not significant; daily work assignments for warehouse employees were faxed each day from the old facility; one of the three warehouse employees had to punch in and out daily at old facility from which he transported products to the warehouse and the only employee who transferred from the old facility retained his seniority.

In brief, the Union urges that Gitano Distribution Center is not applicable because it involved the proposed accretion of an employee complement which had been in existence at the time the union was recognized, but nonetheless had not been included in the union’s bargaining unit. It is conceded that the Board in Gitano Distribution Center noted that accretion would not be appropriate because the disputed employee group was in existence at the time of the election, the parties did not include them in the bargaining and no “substantial changes” occurred in the duties and responsibilities of the bargaining unit employees or of the disputed employees since the election. Gitano Distribution Center at 1174. However, the Board went on to say that even if a unit clarification were appropriate, any community of interest the disputed employees share with the bargaining unit employees is not so overwhelming as to require their accretion to the bargaining unit. In this regard, the Board emphasized that it has followed a restrictive policy in finding accretion and that it will find a valid accretion “only when the additional employees have little or no separate group identity . . . and when the additional employees share an overwhelming community of interest with the preexisting unit to which they are accreted.” Id.

In the case at hand, the Union has the burden of showing that Master Graphics employees have been so effectively merged into the E&D Web unit or

are so functionally integrated as to have no separate identity. Based on the record evidence introduced, I find that the presumption has not been rebutted. As noted above, the record reveals that E&D Web and Master Graphics have separate control of labor relations. The record also reveals lack of interchange. The only Master Graphics production employee who formerly worked at E&D Web was Jeffrey Eggert. The testimony reveals that Eggert had already decided to resign from E&D Web before applying at Master Graphics. There is no evidence that Eggert was transferred, either temporarily or permanently, from E&D Web to Master Graphics. There is evidence of one E&D Web employee, Larry Robsen, who was observed on one or two occasions working at Master Graphics. There is no other evidence of any transfers, either permanent or temporary, of bargaining unit employees from E&D Web to Master Graphics or vice versa.

While the record reveals some differences in the equipment and process used at E&D Web and Master Graphics, Eggert testified that he did not require any specialized training in order to operate the press at Master Graphics. As noted above, working conditions at E&D Web are controlled by the cba and by the employee handbook at Master Graphics. Compared to E&D Web bargaining unit employees, Master Graphics production employees earn a lower wage, receive fewer vacation days, work a 40 hour week rather than 37.5 hours, do not earn double time after four hours of work on Saturday and for any work on Sundays, and receive insurance under the company-sponsored plan. Notwithstanding Eggert's testimony that he was hired to work for Master Graphics by Chris Love, the record reveals that Frueh makes employment decision at Master Graphics without interference from the Love brothers.

Based on the above, and the distance of 80 miles between the facilities, I find that the Union has failed to rebut the presumption of appropriateness of the Master Graphics facility. Thus, clarification of the bargaining unit is not warranted and the petition is hereby dismissed.

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